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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 18th December 2024

**S.R.O. No. 729/2024**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated the 8th November 2024 passed in the ID Case No. 06 of 2021 by the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Chennai Radha Engineering Works (P) Ltd., C/o. Vedanta Aluminium Ltd., Near D.A.V. School, Narayani Building, Sunarimunda Road, Dist. Jharsuguda, 2. Vedanta Alumina Pvt. Ltd., At Bhurkamunda, Dist. Jharsuguda and Pappu Prasad Sharma, S/o. Late Suchan Prasad Sharma, At Beherapat, P.O. Ekatali, Dist. Jharsuguda-768202 was referred to for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE LABOUR COURT SAMBALPUR  
INDUSTRIAL DISPUTE CASE No. 06 of 2021

Dated the 8th November 2024

*Present :*

Shri Raghu Nandan Das, LL.B.,  
Presiding Officer,  
Labour Court, Sambalpur.

*Between :*

1. Chennai Radha Engineering Works (P) Ltd    .. First Party—Managements  
C/o Vedanta Aluminium Ltd.,  
Near D.A.V. School, Narayani Building,  
Sunarimunda Road, Dist. Jharsuguda.

2. Vedanta Alumina Pvt. Ltd.,  
At. Bhurkamunda  
Dist. Jharsuguda.

*Vrs.*

Pappu Prasad Sharma,  
S/o Late Suchan Prasad Sharma,  
At. Beherapat, P.O. Ekatali,  
Dist. Jharsuguda-768202

.. Second Party—Workman

*Appearances :*

Shri Deepak Patel and Associates, Advocates.	. . For the Workman
Shri Sandeep Awasthy and Associates, Advocates.	. . For the Management No. 1 and 2
Date of conclusion of argument	. . 30th October 2024
Date of Award	. . 8th November 2024

**AWARD**

This reference has been made by the Government in Labour & E.S.I Department to this Court vide order, dated the 7th September 2021 Undre Section.12 (5) read with Section 10 (1) (d) of the I.D. Act, 1947 for adjudication of the following Industrial Dispute:

“Whether the termination of service of Shri Pappu Prasad Shrama, Driver (HMTV) w.e.f. the 27th April 2018 by M/s Chennai Radha Engineering Works (P) Ltd., a contractor of M/s Vendanta Limited, Bhurkamunda, Jharsuguda, is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. After receipt of aforesaid reference from the Government, the Workman had filed his statement of claim on dated the 25th October 2021. The case of the Workman in brief is that, he was appointed as a Driver (LMV) w.e.f. the 1st September 2013. His place of employment was at JSG-CPP against W.O. No. 6600002416/2418, dated the 1st April 2013 His monthly salary was Rs.7,500 as per the Appointment Letter, which increased to Rs.14,180 after increment. The normal working hours followed by the Company for all the shifts is of 8 hours including the lunch and tea break, but the Workman was working for 12 hours, which is evident from the Attendance Roll of the Company.

2.1 It is also the case of the Workman that, he was terminated from his job on dated the 27th April 2018 for absenting himself from duty without prior permission/application, as alleged by the First Party—Management. The ground on which the Workman was terminated was not just, proper and legal, as he had been regularly tendering his service and duty as a Driver (LMV). He was not given any opportunity to prove his innocence and was flatly terminated from his job. Although, he was regular in his duty from dated the 24th March 2018, he has not been paid his salary for the last two months and was terminated from his service violating the principle of natural justice.

2.2 It is also the case of the Workman that the First Party—Management No. 2 has been made a party in this case, as it is the mother Company, which has sub-let works to the First Party—Management No. 1 and the matter was intimated to the First Party—Management No. 2 on dated the 11th April 2018, to which it remained silent.

In the aforesaid facts and circumstances, it is prayed to notice both the First Parties, and after due adjudication, to revoke the termination of the Workman, so also, to direct the First Party—Management No.1 to pay his outstanding salary.

3. On the other hand, the First Party—Management No. 1 has filed its W.S. contending that the workman was working under it (Company), and during the service period, his performance, attitude and obedience towards the office superiors was not satisfactory, for which he was served

with caution notices several times. It is also contended that the Workman was absent from duty without any intimation, which amounted to misconduct on his part. Even, after several letters and notices were served upon him by hand and by Regd. Post, the workman willfully neglected to join in his duty. Considering the long unauthorized absence of the workman, the Company was constrained to strike off his name from the Roll. Thereafter, it settled all the dues and requested him to receive the same as per the statutory provisions, but the Workman denied receiving the same.

3.1 It is also contended that this First Party appeared before the Conciliation Officer-cum-D.L.O., Jharsuguda at the instance of the Workman for conciliation of the matter. An amicable settlement was arrived between the parties and the Workman received the payment of Rs.19,878 in his Bank Account. As such, the termination of the present Workman was finally settled after receipt of final dues as per statutory provisions. After final settlement, the D.L.O., Jharsuguda, instead of closing the matter has referred the same to the Government leading to the present reference.

The First Party—Management No. 1 further submits that the Workman deliberately and willfully neglected his duty for which several notices were issued to him for his gross negligence, disobedience and misconduct. His negligence in duty caused irreparable loss to the Company, for which he is liable for vital action by this First Party.

4. Similarly, the First Party—Management No. 2 has filed its W.S. contending that it is a registered Company having its registered office at Mumbai. It is having Aluminium and Power manufacturing units at Jharsuguda. It engages various service providers/Contractors for the purpose of executing various functions. It is also contended that this First Party is a separate legal entity under the Companies Act, having a perpetual succession and common seal. Likewise, the First Party—Management No. 1 is another separate legal entity having no relationship with this First Party No. 2. Both parties are separate and have separate Management altogether.

4.1 The First Party No. 1 has been providing services to the First Party No. 2 by engaging its own staff. This First Party No. 2 has no power of appointment of the employees for the First Party No. 1. Similarly, it lacks jurisdiction to take any disciplinary action against the employees of the First Party No. 1. There is no jural relationship of master and servant between this First Party No. 2 and the workman. This First Party No. 2 has not received any notice relating to the alleged grievance of the workman. That apart, there is no specific allegation against this First Party No. 2 in this matter. As such, this First Party No. 2 is neither a necessary nor a proper party to this case.

4.2 It is also contended that this First Party No. 2 was only asked to be present for the conciliation proceedings. Thereafter, it was informed about nothing and received Notice from this Court, dated the 27th March 2023 relating to this case. In the instant case, the First Party No. 1 has terminated the Workman duly in accordance with the statutory provisions and principle of natural justice. The workman has been provided ample opportunities to rectify his continuous misconduct and unauthorized absence by the First Party No. 1. After finding no appropriate response from the Workman, the First Party No. 1 duly struck off his name from its Roll. Hence, the termination of the Workman is legally justified. The First Party No. 1 has already paid the Workman all his statutory dues. With the above contention, it is prayed to dismiss this case.

The Workman has filed his rejoinder to the W.S. of the First Party No. 2 admitting some of the averments and denying some other.

5. Out of the pleading of the parties, this Court has framed the following issues.

(1) Whether the termination of service of Shri Pappu Prasad Sharma, Driver (HMTV) w.e.f. the 27th April 2018 by M/s Chennai Radha Engineering Works Pvt. Ltd., a contractor of M/s Vedanta Limited, Bhurkamunda, Jharsuguda is legal and /or justified ?

(2) If not, what relief the workman is entitled to ?

6. In order to prove this case, the Workman has examined himself as W.W. No.1. He has also exhibited documents marked as Ext. 1 to Ext. 7. On the other hand, in spite of sufficient opportunities being given, none of the First Party—Managements either adduce any oral evidence or any documentary evidence.

The learned Counsel for the Workman has relied upon the judgment of the Hon'ble High Court reported in 2011 (Supp. II) OLR-511 Somanath Gouda and another Vrs. Smt. Sunkari Mutylamma (dead), her LRs Sunkari Sanjeeva and others in support of the case of the workman.

7. *Issue No. (i)*—This issue being the important and vital issue is taken first for consideration. The specific pleading of the workman in the present reference is termination of his job w.e.f. the 27th April 2018 without prior permission/application vide Ext. 4. The Workman has proved his Appointment Letter vide Ext. 1, which discloses that he was appointed by the First Party No. 1 w.e.f. the 17th November 2012 and thereafter, he had been designated as "Driver (LMV)" w.e.f. the 1st September 2013. It also discloses that his place of employment was at JSG-CPP and he was to be deployed under any one Department according to the site requirement. Ext. 1 also contains the salary break-up, as well as, the terms and conditions of employment.

It is also the specific pleading of the Workman that the grounds on which he was terminated, was not just, proper and legal, as he had been regularly attending his duty and rendering his service. He has also pleaded that without any opportunity being given to him to prove his innocence; he was flatly terminated from his job by the First Party No. 1. As W.W. No. 1, the Workman has proved the above pleading in his examination-in-chief. Although, the W.W. No. 1 has been cross-examined by the learned Counsel for the First Party No.1 in part, no question has been put to him regarding the above evidence of W.W. No. 1.

7.1 The document vide Ext. 3 is the written submission of facts by the First Party No. 1 before the D.L.O., Jharsuguda further to the conciliation proceeding held in the office of the D.L.O., Jharsuguda held on dated the 28th May 2019. Admittedly, this document discloses some allegations against the Workman leveled by the First Party No. 1. But surprisingly, the W.W. No. 1 has not with held the same and exhibited the same before this Court. Now, this Court, in absence of positive evidence to that effect, cannot believe the allegation made against the Workman in Ext. 3. Rather, this shows the bonafideness of the Workman.

7.2 At Para. 16 of his cross-examination, the W.W. No.1 has been cross-examined by the learned Counsel for the First Party No. 1 regarding the shifts, which was in vogue at the worksite, where the Workman was working. Nothing has been elicited from the mouth of the Workman to disbelieve his testimony, or to believe the allegations made against him on Ext. 3.

Now, Ext. 4 is the service Termination Letter issued in favour of the Workman by the First Party No. 1. It shows that earlier another three letters were issued to him by the First Party No. 1.

But, as stated earlier, the First parties have not led any evidence in support of their claims to prove the allegations leveled against the Workman, on Ext. 4 also.

7.3 Ext. 5 is the Transport Attendance Sheet of the Workman, which discloses that he was on duty from dated the 22nd March 2018 to dated the 31st March 2018 in different shifts. Ext. 7 is the Manpower Details of the Company containing the name of the Workman at Sl. No. 5 under the category of HMV and LMV-Driver and showing "12 hours" in the last column. This corroborates the claim of the Workman that he was working for 12 hours in the Company instead of normal working of 8 hours, in absence of any contrary evidence to that effect.

7.4 Moreover, Ext. 4 (Termination Order) also discloses that, the First Party No. 1 had noticed, as well as, the Attendance Register of Workman shows that he had been absenting himself from duty without prior permission/application from dated the 27th April 2018. The third paragraph of this document also discloses that the service of the Workman automatically stood terminated w.e.f. the 27th April 2018. It is pertinent to mention that this Ext. 4 had been issued on dated the 28th May 2018, i.e., after one month from the date of termination of Workman. But interestingly, the document vide Ext. 8 (series), which are the Attendance Sheet of the workman, show that he had attended duty on the 27-04-2018, 28-04-2018, 29-04-2018, 30-04-2018, 03-05-2018, 04-05-2018, 05-05-2018, 06-05-2018, 07-05-2018, 11-05-2018, 14-05-2018, 17-05-2018, 18-05-2018, 19-05-2018, 20-05-2018, 25-05-2018, 26-05-2018, 27-05-2018, 28-05-2018, 31-05-2018, 01-06-2018, 02-06-2018, 03-06-2018, etc..

7.5 There are also some other dates, which are not legible. But one thing common in all the above noted Attendance Sheets is that the Workman had all along entered the Plant premises at 6.00 a.m. and had left the same at 6.00 P.M.. The above evidence very much indicates that the Workman was working for 12 hours on each day. Although the above Ext. 8 (series) has been marked with objection by the learned Counsel for the First Party No. 1, no question has been put to W.W. No. 1 during his cross-examination in this regard. This Court finds nothing to disbelieve Ext. 8 (series).

7.6 In its W.S., the First Party No. 1 has contended that the Workman was absent from duty without any intimation to the office. Even after several letters, Notices were served by hand and by R.P., the workman neglected to join the work place. Taking the aforesaid long unauthorized absence, the Company was constrained to strike off his name from the Roll. As stated earlier, the First Party No. 1 has not proved his pleading by bringing his witness to the witness box. All its allegations against the Workman have remained as bald allegations. It is not forthcoming if any Domestic Enquiry had been conducted by the First Party No. 1 against the Workman on such allegations. But, before this Court also, the First Party No. 1 has failed to prove such allegations against him.

7.7 No copy of letters, Notices, Postal-receipts, etc. showing the alleged communication by the First Party No. 1 with the Workman has been proved by it before this Court. In such a situation, this Court cannot believe the allegations leveled against the Workman. Nothing, even a scrap of paper has been filed/proved/relied upon by the First Party No. 1 against the Workman in this case. Rather, all the above evidence on record corroborates the pleading and evidence of the workman that, without any reasonable opportunity being provided to submit his reply/answer, he has been flatly terminated by the First Party No. 1, as alleged by him.

7.8 As it appears to this Court, the principle of natural justice had been violated while terminating the present Workman from his job by the First Party No. 1. This is very much clear

from the evidence on record. If any misconduct had been done by the Workman, the same had to be dealt with the existing Rules and Regulations of the First Party No. 1. But without following the same, the First Party No.1 had terminated the Workman w.e.f. the 27th April 2018, which is illegal and unjustified.

7.9 It is admitted fact that the First Party No.1 has been providing services to First Party No. 2 by engaging its own staff, as has been pleaded by the First Party No. 2. It is also Pleaded that the First Party No. 2 has no power of appointment of any employee of the First Party No. 1, and it also cannot take disciplinary action against the employees of First Party No. 1. However, the way in which the First Party No. 2, in its pleading, has supported the action of First Party No. 1 against the Workman, shows that both the parties had joined hands to terminate the Workman from employment. Like that of First Party No. 1, the First Party No. 2 has also not adduced any evidence in this case. As such, both the First Party—Managements are responsible for termination of the job of the Workman.

In the judgment relied upon by the learned Counsel of the Workman, i.e., Somanath Gouda and another (*supra*), it is held by the Hon'ble Court that non-examination of the party to *lis* would lead to drawal of an adverse inference against it, which is very much applicable to the present case. Accordingly, this issue is decided in favour of the Workman and against the First Party—Managements.

8. *Issue No. (ii)*— In view of the fact that the Issue No. (i) being decided in favour of the Workman, now it is to be seen that what relief/reliefs he is entitled to receive. As the termination of the Workman has been held to be illegal and unjustified, as per the settled law, he is to be reinstated in his previous post with full back wages, although not claimed by him in his statement of claim.

In the case of *Deepali Gundu Surwase Vrs. K.J.A. Mahavidyalaya (D.Ed.) and others* (2013) 10 SCC 324, the Hon'ble Apex Court has set forth detailed guidelines at Para. 33 of the said judgment, which are to be followed while awarding or not, reinstatement with continuity of service and back wages, in case of wrongful termination of service. In Para. 33 (i) of the said judgment, it has been held that "In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule". The Hon'ble Court has also set forth other guidelines to be followed in such situation.

8.1 The instant case is an example, where without following the principal of natural justice and violating the same, the Workman has been terminated by both the First Party—Managements, particularly by First Party No. 1. So, he is to be reinstated in his job with full back wages from the alleged date of his termination by First Party No. 1. So, he is to be reinstated in his job with full back wages from the alleged date of his termination.

From the above analysis of evidence of record, both oral and documentary; and the ratio laid down by the Hon'ble Apex Court in the judgments referred to above, this Court is of considered view that workman Pappu Prasad Sharma is entitled for reinstatement with continuity of service with full back wages since the date of his illegal termination. As such, such order is required to be passed by this Court and this issue is accordingly decided in favour of the Workman and against the First Party—Managements.

Hence, it is awarded as follows:



## AWARD

The reference, as scheduled above, by the Government of Odisha in Labour & ESI Department, is answered on contest against both the First party—Managements and in favour of Workman Shri Pappu Prasad Sharma. The termination of service of Shri Sharma w.e.f. the 27th April 2018 by First Party No. 1, a Contractor of First Party No. 2, is illegal and unjustified.

The First Party—Management No. 1 i.e., M/s Chennai Radha Engineering Works (Private) Ltd., is hereby directed to reinstate Workman Shri Pappu Prasad Sharma in his post of Driver (LMV), as he was doing at the time of his illegal termination, with full back wages and all statutory benefits.

Dictated and corrected by me.

R. N. DAS  
11-12-2024  
Presiding Officer  
Labour Court, Sambalpur

R. N. DAS  
11-12-2024  
Presiding Officer  
Labour Court, Sambalpur

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[No. 10856—LESI-IR-ID-0006/2021-LESI]  
By order of the Governor  
NITIRANJAN SEN  
Additional Secretary to Government

List of witness examined on behalf of the Second Party—workman:

W.W.1 : Shri Pappu Prasad Sharma

List of witness examined on behalf of the First party—Management 1 & 2:

-Nil-

List of documents marked as exhibits on behalf of the Second Party—workman:

Ext.1: Copy of Letter of Appointment, dated the 1st September 2019 of workman issued by First party—Management No. 1

Ext.2: Copy of wage slip of workman for the month of December, 2017 issued by First party—Management No. 1

Ext.3: Copy of written submission of facts issued by the First party—Management No.1 to the D.L.O., Jharsuguda on the date 18th June 2019

Ext.4: Copy of Termination Order of workman issued by the First party—Management No. 1

Ext.5: Copy of Transport Attendance Sheet for the month of March, 2018

Ext.6: Copy of Transaction Enquiry relating to salary of workman received from the First party—Management No. 1

Ext.7: Copy of ManPower details containing the name of workman as a HMV Driver

Ext.8: Copies of Attendance Sheets of Workman

List of documents marked as exhibits on behalf of the First party—Management:

-Nil-